

Special Topics of Qualified Plans

LEASED EMPLOYEES

Qualified and other tax-advantaged retirement plans, such as SEPs and SIMPLEs, have specific guidelines as to which persons must benefit under the plan. Generally, only an employee of the sponsor organization will benefit under the plan. Independent contractors and temporary or leased employees are usually not covered by a company's retirement plan. However, there are specific rules that determine when a leased employee must be treated as an employee for purposes of the plan. If these rules were not in place, a company could simply hire temporary employees (leased employees) to fill the majority of positions within the company and avoid having to provide them with retirement benefits. This would create the illusion of a nondiscriminatory plan even though such a plan would be discriminatory. To avoid this possibility, the IRC provides guidance on who is to be considered leased employees and the employer's (sponsor) requirements as it relates to these employees.

Any person who provides services to the employer and is not an employee will be considered a leased employee if the following criteria are met:

- The services provided are pursuant to an agreement between the employer and a leasing organization;
- Such person has performed services for the employer on a substantially full-time basis for a period of at least one year; and
- Such services are performed under the primary control of employer.¹

The significance of these rules is that leased employees must be considered a common law employee for purposes of meeting coverage rules, top-heavy rules, contribution and benefit rules, as well as a variety of other rules.²

1. IRC Section 414(n)(2).

2. IRC Section 414(n)(3) states that a leased employee is considered an employee for purposes of the following code sections: Sections 401(a)(3), (4), (7), (16), (17), and (26); Section 408(k); Section 408(p); Section 410; Section 411; Section 415; Section 416; Section 79; Section 106; Section 117(d); Section 120; Section 125; Section 127; Section 129; Section 132; Section 137; Section 274(j); Section 505; and Section 4980(B).



EXAMPLE 1.1

ABC company, sponsor of a qualified plan, hires a receptionist, Diana, through a temporary service and employs Diana for a period in excess of one year. In such a case, Diana is treated the same as any employee of the organization for certain requirements related to qualification of the retirement plan. For example, Diana must be considered for purposes of meeting the coverage rules if she was otherwise eligible (e.g., 21/1). Although the general rule is that only 70 percent of the non-highly compensated employees must be covered, the addition of Diana may cause the plan to violate the coverage rules.

The IRC provides that if certain requirements are met (safe harbor rules) by the leasing organization, someone meeting the definition of a leased employee will not have to be treated as an employee. The leased employee(s) must be covered by a plan that is maintained by the leasing organization and the leased employee(s) must not represent more than 20 percent of the employer's nonhighly compensated work force. However, the plan that is sponsored by the leasing organization must also meet certain requirements, including:

- The plan must be a money purchase pension plan with a nonintegrated employer contribution rate for each participant of at least 10 percent of compensation;
- Such plan provides for full and immediate vesting; and
- Each employee of the leasing organization (other than employees who perform substantially all of their services for the leasing organization) immediately participates in such plan.¹

Although the above rules provide a safe harbor for an employer who uses leased employees, the requirements are so stringent that they are unlikely to be met.

CONTROLLED GROUP

There are a variety of tax benefits that are available to corporations and other taxable entities, such as lower tax brackets, expensing of depreciable business assets (IRC Section 179), and tax deductions for contributions to qualified plans. Except for the controlled group rules under IRC Section 1561, savvy business owners could double or even triple these and other tax benefits by splitting current companies into two or three companies and still maintaining complete ownership. The controlled group rules cause multiple entities that are commonly owned to be treated as one entity for purposes of certain tax limits and tax benefits. The controlled group rules are intended to prevent business owners from simply splitting a company into separate companies with identical ownership so as to double or even triple certain benefits that are provided under the Internal Revenue Code.

However, fully understanding the controlled group rules may allow a family to structure entity ownership in such a way as to avoid falling within the controlled group rule, thus being able to benefit by having multiple entities.

1. IRC Section 414(n)(5).

The Internal Revenue Code (specifically IRC Section 414(b)) also provides that companies belonging to a controlled group be treated as a single employer for purposes of qualified plans, specifically for purposes of:

- IRC Section 401 – qualification
- IRC Section 404 – deductions
- IRC Section 410 – participation
- IRC Section 415 – contribution and benefit limitations
- IRC Section 416 – top-heavy rules

Therefore, companies belonging to a controlled group must comply with the qualification rules, participation rules, and the other rules relating to qualified plans as if the companies were a single employer. In the event that such businesses fail to meet these requirements, the qualified plan(s) will be subject to disqualification. In addition to the rules for qualified plans, the rules under IRC Section 408(k) relating to Simplified Employee Pensions (SEPs) are also subject to the same limitations.

DEFINITION OF A CONTROLLED GROUP

A controlled group consists of two or more commonly owned corporations. These commonly owned entities generally take one of two forms. A controlled group will be classified as a parent-subsidary group or as a brother-sister group. However, a group of related entities may be classified as a combined controlled group of corporations.

Parent-Subsidiary Controlled Group

A parent-subsidiary controlled group of businesses consists of a group of entities with common controlling ownership and a common parent. A controlling interest generally implies an 80 percent ownership interest. However, for purposes of IRC Section 415 (limitation on contributions and benefits), the 80 percent limit is reduced to 50 percent. The following examples will help to illustrate the point.

P corporation owns stock representing 80 percent of the total combined voting power of all classes of stock entitled to vote of S corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

EXAMPLE 1.2

Assume the same facts as above. Assume further that S owns stock representing 80 percent of the total value of shares of all classes of stock of T Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and T. The result would be the same if P, rather than S, owned the T stock.

EXAMPLE 1.3

L Corporation owns 80 percent of the only class of stock of M Corporation, and M, in turn, owns 40 percent of the only class of stock of O Corporation. L also owns 80 percent of the only class of stock of N Corporation, and N, in turn, owns 40 percent of the only class of stock of O. L is the com-

EXAMPLE 1.4

mon parent of a parent-subsidary controlled group consisting of member corporations L, M, N, and O.

Brother-Sister Controlled Group

A brother-sister controlled group consists of two or more companies that share common owners. There are two tests that must be met for a group of entities to be considered a controlled group: the 50 percent test and the 80 percent test. Two or more entities are a brother-sister controlled group if the same five or fewer persons who are individuals, estates, or trusts own stock possessing:

- At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of the stock of each corporation; and
- More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent that such stock ownership is identical with respect to each such corporation.

These tests are best understood through an example.

EXAMPLE 1.5

Assume that individuals A, B, C, D, and E own corporations P, Q, R, S, and T as follows. Are these corporations or some of these corporations considered a controlled group? The answer to this question depends on whether or not both the 80 percent test and the 50 percent test are met.

CORPORATIONS						
Individuals	P	Q	R	S	T	Identical Ownership
A	55%	51%	55%	55%	55%	51%
B	45%	49%	-	-	-	45%*
C	-	-	45%	-	-	
D	-	-	-	45%	-	
E	-	-	-	-	45%	
Total	100%	100%	100%	100%	100%	
<i>*(P & Q only)</i>						

The 50 percent test is met for all five corporations (P through T). However, corporations R, S, and T are not members of a controlled group because at least 80 percent of the stock of each of the corporations is not owned by the same five or fewer individuals whose ownership is considered for purposes of the 50 percent test. Only corporations P and Q are classified as a controlled group in the above example.

Consider the following example:

EXAMPLE 1.6

Individuals	SCENARIO 1		SCENARIO 2		SCENARIO 3	
	P	Q	P	Q	P	Q
A	100%	-	80%	20%	70%	30%
B	-	100%	20%	80%	30%	70%
C	-	-	-	-	-	-
D	-	-	-	-	-	-
E	-	-	-	-	-	-
Total	100%	100%	100%	100%	100%	100%

Clearly, Companies P and Q in Scenario 1 are not a controlled group. A owns 100 percent of the stock of Company P, while B owns 100 percent of the stock of Company Q. In Scenario 2, the 80 percent test is met; however, the 50 percent test is not met. A has 20 percent common ownership of Companies P and Q and B has 20 percent common ownership of Companies P and Q. Thus, the identical ownership is 40 percent, not the required greater than 50 percent. In Scenario 3, both tests are met, which means that Companies P and Q are members of a brother-sister controlled group.

AFFILIATED SERVICE GROUPS

Affiliated service groups are groups of entities that perform services together on a regular basis. The importance of affiliated service groups to retirement planning is that the entities that constitute an affiliated service group are treated as one organization or entity for purposes of the qualified plan rules. Prior to these rules, elaborate structures of entities could be established to provide higher qualified plan benefits to certain groups of owners at the expense of the rank-and-file employees. The affiliated service group rules were enacted to prevent such abuses.

A classic example of an affiliated service group is a two person law firm that is structured as a partnership with two corporations as the partners. Each corporation is solely owned by an individual attorney, who is also the only employee of such corporation. The three organizations, the partnership and the two corporations, constitute the affiliated service group.

An “affiliated service group” is particular type of group of related employers. The affiliated service group designation refers to two or more organizations that have a service relationship and, in some cases, an ownership relationship.¹ There are three types or categories of affiliated service groups, including A-Organization groups, B-Organization groups, and management groups.

1. IRC Section 414(m).

A-ORGANIZATION GROUPS

An A-Organization (A-Org) group consists of two or more entities.¹ One entity, referred to as a First Service Organization (FSO), may be any type of entity, including a partnership, corporation, or LLC.



However, if it is a corporation, it must be a professional corporation.² The second entity, referred to as an A-Organization, must have an ownership interest in the FSO and must regularly perform services for the FSO or must be regularly associated with the FSO in performing services for third parties.³

Both the FSO and the A-Org must be service type organizations, meaning that capital is not a significant income producing factor of the firm.⁴ Capital is a significant factor if a substantial portion of the total income of the firm results from the use of capital in the business. Examples of capital intensive businesses include manufacturing and distribution companies.

Based on this definition of an A-Org Group, the law firm in the above example is an affiliated service group. The partnership is the FSO, with the corporations being the A-Organizations. Each of the A-Orgs regularly performs services for the FSO.

A doctor is the 100% shareholder of Corporation X, a medical corporation that specializes in sports injuries. He also owns a 40% interest in Corporation Y, which performs such medical diagnostic services as X-rays and MRIs. The doctor regularly refers patients to Y for such services. Under the attribution rules of Section 318(a)(3), the doctor's 40% ownership interest in Corporation Y is attributed to Corporation X. The corporations are regularly associated in providing medical services to patients; thus, constitute an affiliated service group. Under the A-Org test, Corporation Y is the FSO and X is the A-Organization. Y has ownership interest in X and the organizations regularly perform services for patients.

1. Note that the "A" in A-Org refers to the last letter in the code section, IRC Section 414(m)(2)(A).
2. A professional corporation is a corporation that provides professional services. Examples include accountants, actuaries, architects, attorneys, chiropractors, chiropractors, medical doctors, dentists, professional engineers, optometrists, osteopaths, podiatrists, psychologists, and veterinarians. Prop. Treas. Reg. Section 1.401 (m)-1(c).
3. Includes ownership due to attribution under IRC Section 318.
4. Prop. Treas. Reg. Section 1.414(m)-2(f)(1).

B-ORGANIZATION GROUPS

A B-Organization (B-Org) group consists of an FSO and at least one B-Organization.¹ The B-Organization must derive a significant portion of its business from the performance of services for the FSO, or for an A-Organization related to that FSO; perform services for the FSO or A-Organization that are the type historically performed by employees; and be owned at least 10 percent by persons who are highly compensated employees of the FSO or A-Organization.² The B-Organization does not have to be a service organization, as defined above for the A-Org group.

The IRS prescribes two safe harbors to determine whether a B-Organization derives a significant portion of its business from performing services for the FSO or A-Organization. The safe harbors are based on receipts. If neither safe harbor applies, then the determination is made on a facts and circumstances basis. The two safe harbors are the service receipts safe harbor test and the total receipts safe harbor test. These are described below.

Service Receipts Safe Harbor Test

The B-Organization's services are not considered significant if its “service receipts percentage” is less than five percent. The service receipts percentage is the ratio of the gross receipts derived from services the B-Organization performs for the FSO and/or the A-Organization to the total gross receipts derived from all services performed.

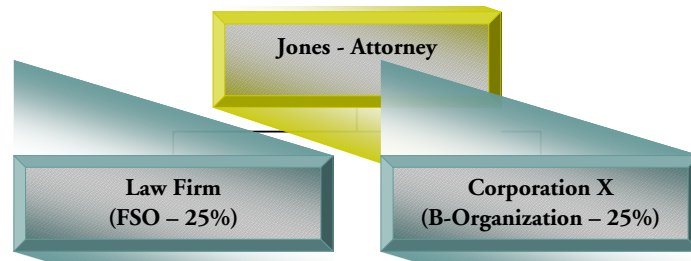
Total Receipts Safe Harbor Test

The B-Organization's services are considered significant if its “total receipts percentage” is 10 percent or more. The total receipts percentage is the ratio of the gross receipts derived from services the B-Organization performs for the FSO and/or the A-Organization to the total gross receipts (whether or not service related).

Jones, an attorney, is a 25% shareholder in a law firm. Jones also has a 25% interest in corporation X, which provides word processing and other clerical and secretarial services. The law firm engages the services of corporation X on a regular basis. X derives at least 10% of its gross receipts from this relationship. The law firm and corporation X constitute an affiliated service group. The law firm is the FSO and Corporation X is a B-Organization with respect to the FSO because it performs services that are historically performed by employees; it meets the total receipts safe harbor test; and Jones, who is an HCE of the law firm, owns at least 10% of X.

EXAMPLE 1.7

1. Note that the “B” in B-Org refers to the last letter in the code section, IRC Section 414(m)(2)(B).
2. Highly compensated employees as defined in IRC Section 414(q). Note, the attribution rules of IRC Section 318 apply to IRC Section 414(q).



MANAGEMENT GROUPS

A management group consists of a recipient organization and a management organization. To be an affiliated service group, the management organization's principal business must be the performance of management functions on a regular and continuing basis for the recipient organization.¹

EXAMPLE 1.8

Mike is the former owner of Company P. He sells his interest in the company but continues to provide management consulting services to Company P through a new wholly owned entity, Company Q. Company Q provides management functions to P on a regular basis with all of the income for Company Q derived from Company P. Companies P and Q constitute an affiliated service group.

Unlike the A-Org groups and the B-Org groups, there is no ownership requirement. In the above example, there was no ownership between Company P and Company Q. Company Q simply provided management functions to Company P as its primary business.

How is principal business established? While there is apparently no objective test in the determination of what constitutes a principal business, a reasonable approach is to evaluate total income or revenue. If more than 50 percent of the income is derived from a single source, it is likely that there is an affiliated service group.

EXAMPLE 1.9

Assume the same facts as above except that Company Q also provides management functions to 2 other businesses (total of 3) and that the revenue received from each of the companies is approximately equal. In this case, there is not an affiliated service group. Since no one company is the principal business of Company Q, there is no affiliated service group.

Impact of a Management Group Organization

In practice, most management organizations are adversely affected. Typically, the management organization employs mostly highly compensated employees, while the recipient organization employs mostly nonhighly compensated employees. If the management organizations establishes a qualified plan, then it must be tested for coverage (IRC Section 410(b)) considering the employees of the management organization and the recipient organization. As a result, the

1. IRC Section 414(m)(5).

management organization either has to join the plan of the recipient organization or must maintain a plan that provides similar benefits as the recipient organization plan.

IMPACT OF AFFILIATED SERVICE GROUPS

As with the controlled group rules, when a group of companies are classified as an affiliated service group, the group of companies is treated as a single employer for purposes of qualified plans rules. The qualified plan rules that are impacted include eligibility, coverage, vesting, non-discrimination (including ADP and ACP), contribution/benefit limits under IRC Section 415, top-heavy rules, and other rules.

SEPARATE LINE OF BUSINESS

Eligible employees within the same company are generally required to be treated uniformly with regard to qualified retirement plans. However, companies that maintain separate lines of business may be permitted to treat the employees of one line of business different than employees of another line of business.¹

Usually, a separate line of business will have a separate organizational unit, separate accounting, separate employee group, and separate management. A firm can provide different benefits, including qualified retirement plan benefits, to employees of a separate line of business than to other parts of a business. This provision may allow a firm to reduce company expenses.

For an employer to treat various parts of a business as separate lines of business, there must be a valid business purpose and certain rules must be met. The employer must have at least 50 employees within a line of business and notify the Secretary (IRS) that such line of business is going to be treated as a separate line of business for purposes of IRC Section 129(d)(8) and 410(b). Form 5310-A (Notice of Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Line of Business) is used to notify the IRS that a company intends to maintain separate lines of business. In addition, such lines of business must meet certain guidelines prescribed by the Secretary or the employer must receive a determination letter permitting the line of business to be treated as a separate line of business.

Certain safe harbor provisions will satisfy the previous requirement of meeting prescribed guidelines established by the Secretary.² A line of business will meet the safe harbor requirements if the percentage of highly compensated employees is not less than one-half and not more than twice the percentage that highly compensated employees are of all employees of the employer. There are also a variety of administrative safe harbor rules that will permit a separate line of business.

1. IRC Section 414(r).
2. IRC Section 414(r)(3).

BREAK IN SERVICE RULES

In some cases an employee may leave their job and return at a later time. This may occur because an individual quits and then is later rehired, or the individual may take a leave of absence due to the birth of a child or for military service. These types of leaves from the employer may create what is referred to as a “break in service.” The consequences of a break in service depend on the length of time the employee is away, whether their retirement benefit was fully vested, and, in some cases, the reason that the employee took the leave.

A one year break in service is defined as a “calendar year, plan year, or other 12-consecutive-month period designated by the plan (and not prohibited under regulations prescribed by the Secretary of Labor) during which the participant has not completed more than 500 hours of service.”¹ In the case of a plan utilizing the elapsed time method, the term “1-year break in service” generally means a 12-consecutive month period beginning on the severance from service date or any anniversary thereof and ending on the next succeeding anniversary of such date.

EXAMPLE 1.10

Fischer and Company maintains a qualified plan. The plan requires 2 years of service to become eligible for the plan. Paul was hired on January 1, 2010 and works 40 hours per week. Paul takes a leave of absence from February 1, 2011 to December 31, 2011 to care for his aging father. Paul returns to work January 1, 2012. Since Paul only worked 160 hours in 2011, a one year break in service occurred for 2011.

In general, a qualified plan must count all of the employee’s years of service for eligibility purposes since the employee’s date of hire. However, for an employee who has incurred a 1-year break in service, years of service completed before such break are not required to be taken into account until the employee has completed one year of service after his return to service.² In addition, if a plan requires two years of service before an employee can enter the plan, then the plan can, if properly elected in the plan document, disregard years of service before a “one year break” in service.

EXAMPLE 1.11

In the example above, Paul had one year of service before he had a one year break in service. Since the plan requires two years of service for eligibility the plan is not required to take into account Paul’s service for 2010. Thus, when Paul returns to work in 2012 his years of service for eligibility will start over.

If an employee is already eligible for the qualified plan then a break in service can affect the employee’s vesting in the plan. In the case of a nonvested participant who has incurred a 1-year break in service, years of service completed before such break are not required to be taken into

1. IRC Section 411(a)(6)(A).
2. IRC Reg. Section 1.411(a)-6.

account with regard to vesting if the employee has the greater of five consecutive one year breaks in service or the participant's years of service before the break.

Fischer Company maintains a qualified plan. The plan utilizes a calendar year 5-year cliff vesting schedule. Paul was hired on January 1, 2010. After 3 years of service Paul separated from service. One year later Paul returns to Fischer Company and reenters the plan. If Paul completes one year of service after reentering the plan then the plan must credit Paul for his previous years of service. Thus, when Paul has completed one year of service after reentering the plan, he will have 4 years accumulated toward meeting the vesting requirement.

EXAMPLE 1.12

Assume instead Paul returns five years later instead of one year later. Since Paul has five one year breaks in service, the plan is not required to credit Paul for his previous years of service. Therefore, when Paul has completed one year of service after reentering the plan, he will only have 1 year towards the 5 year requirement.

EXAMPLE 1.13

In the case of a participant in a defined contribution plan who has incurred a 1-year break in service, years of service completed after such break are not required to be taken into account for purposes of determining the nonforfeitable percentage of the participant's right to employer-derived benefits that accrued before the break if the employee has five consecutive one year breaks in service or receives a distribution of the account balance.

Fischer Company maintains a defined contribution plan. The plan utilizes a calendar year 2 to 6 year graduated vesting schedule. Paul was hired on January 1, 2010. After 3 years of service Paul separated from service with a vested balance of 40% that was not distributed from the plan. One year later Paul returns to Fischer Company and reenters the plan. If Paul completes one year of service after reentering the plan, then the plan must credit Paul's pre-break in service account for years of service after the break. Thus, Paul's account balance will be 60% vested in all funds in the account at his initial separation. In addition, the contributions made by Paul after he reenters the plan will benefit from the prior years of service. Thus, when Paul has completed one year of service after reentering the plan, he will also be 60% vested in that year's contributions.

EXAMPLE 1.14

Assume instead Paul returns five years later instead of one year later. Since Paul has five one year breaks in service, the plan is not required to credit Paul's pre-break in service account for years of service after the break. Thus, the 60%

EXAMPLE 1.15

unvested portion in his pre-break account is forever lost. In addition, contributions made after Paul's return do not benefit from Paul's prior service. Therefore, when Paul has completed two years of service after reentering the plan, he will only be 20% vested in his post break account balance.

For purposes of determining the employee's accrued benefit under a plan, the plan may not disregard service due to distribution unless the plan provides an opportunity for the participant to repay the full amount of the distribution after returning to service. A defined benefit plan can also require the repayment to include interest no greater than 120 percent of the federal midterm rate on the first day of the plan year that the repayment occurs. The plan provision required may provide that such repayment must be made in the case of a withdrawal because of separation from service, before the earlier of 5 years after the first date on which the participant is subsequently re-employed by the employer, or the close of the first period of 5 consecutive 1-year breaks in service commencing after the withdrawal; or in the case of any other withdrawal, 5 years after the date of the withdrawal.

EXAMPLE 1.16

Fischer Company maintains a defined contribution plan. The plan utilizes a calendar year 2 to 6 year graduated vesting schedule. Paul was hired on January 1 of this year. After 3 years of service Paul separated from service with a vested balance of 40%, which was distributed from the plan. One year later Paul returns to Fischer Company and reenters the plan. Since Paul took the distribution from the plan, the plan does not have to credit Paul for post break service unless he repays the distribution.

Employees wanting to take a leave of absence should carefully examine their plan document so that they do not inadvertently and unnecessarily lose retirement benefits.

MILITARY SERVICE

If an employee leaves employment for qualified military service and is then reemployed after such service, then the employee is treated as not having incurred a break in service. The term "qualified military service" means any service in the uniformed services (as defined in Chapter 43 of Title 38, United States Code) by any individual if such individual is entitled to reemployment rights under such chapter with respect to such service. Each period of qualified military service served by an individual is, upon reemployment, deemed to constitute service with the employer maintaining the plan for the purpose of determining the nonforfeitability of the individual's accrued benefits under such plan and for the purpose of determining the accrual of benefits under such plan.

There is no requirement for the employer to make contributions to the military employee's defined contribution plan while they are on active duty. However, once the military employee returns from military duty and is reemployed, the employer must make the employer contributions that would have been made if the military employee had been employed during the period of military duty. If employee contributions are required or permitted under the plan, the employee has a period equal to three times the period of military duty or five years,

whichever ends first, to make up the contributions. If the employee makes up the contributions, the employer must make up any matching contributions. There is no requirement that the employer contributions include earnings or forfeitures that would have been allocated to the employee had the contributions been made during their military service.¹

The military employee must be permitted to make the maximum amount of elective deferrals that the individual would have been permitted to make under the plan during the period of qualified military service if the individual had continued to be employed by the employer during such period and received compensation. The maximum compensation amount is reduced for any elective deferrals actually made during the period of qualified military service. An employee's compensation (for purposes of elective deferrals) during qualified military service is deemed to be the compensation the employee would have received during the period if the employee were not in qualified military service based on the rate of pay the employee would have received from the employer. If the compensation the employee would have received during such period was not reasonably certain, then the employee's compensation is deemed to be the employee's average compensation from the employer during the 12-month period immediately preceding the qualified military service (or, if shorter, the period of employment immediately preceding the qualified military service).

MATERNITY/PATERNITY LEAVE

For vesting and eligibility purposes, an employee who is absent from work due to pregnancy or the birth or adoption of a child is treated as having completed the number of hours that would have been credited but for the absence up to 501 hours of service. The credit for hours of service during the absence is only for determining if a break in service has occurred.²

Donna works for Mad Scientist Inc. 10 hours a week. Mad Scientist Inc. has a qualified plan and Donna participates in the plan. For the current year Donna worked 36 weeks and was on maternity leave for 16 weeks. While Donna only worked 360 hours for the year, for purposes of the break in service rules she is credited with the 160 hours she would have worked had she not been on maternity leave. Therefore, Donna will not have a break in service since she is deemed to have worked 520 hours for the year.

EXAMPLE 1.17

1. <http://www.dol.gov/vets/usc/vpl/usc38.htm#4318>
2. <http://www.irs.gov/retirement/article/0,id=135692,00.html>

